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November 2, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation*
In the Matter of Review of the Commission's Regulations Governing Television
Broadcasting, MM Docket No. 91-221

Dear Ms. Salas:

On Wednesday, November 1, 2000, I spoke with David R. Goodfriend of Commissioner Ness's legal staff, on behalf of the Office of Communications, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Civil Rights Forum, League of United Latin American Citizens, Philadelphia Lesbian and Gay Task Force, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women and Women's Institute for Freedom of the Press ("UCC *et al.*"), regarding the above-referenced proceeding.

UCC *et al.* filed a timely Petition for Reconsideration of the Commission's Order in the proceeding, which is still pending. UCC *et al.* remains concerned about a number of issues concerning the Commission's current Duopoly Rule. UCC *et al.* is especially concerned that the Rule appears to allow VHF-VHF duopolies, because these combinations appear to directly contravene Congressional intent. During our meeting, I presented Mr. Goodfriend with a copy of the section of the Telecommunications Act of 1996 Conference Committee Report that discussed broadcast ownership rules. Within this section, I highlighted the sentence stating that: "It is the intention of the conferees that, if the Commission revises its multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances." Accordingly, based on this

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OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas

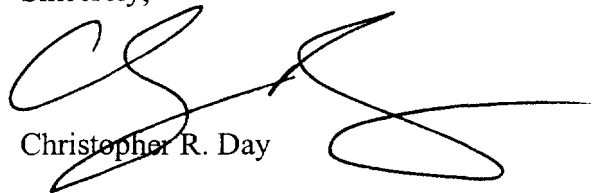
November 2, 2000

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provision of the Conference Committee Report and previous submissions to the Commission, UCC *et al.* again urge the Commission to revise the Duopoly Rule to preserve diversity and localism.

In compliance with the Commission's rules regarding ex parte presentations, an original and one copy of the above-referenced materials are being filed with the Commission for inclusion in the public record. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to be 'CR Day', with a long horizontal flourish extending to the right.

Christopher R. Day

Attachment

cc: David R. Goodfriend (w/o attach.)

TELECOMMUNICATIONS ACT OF 1996

FEBRUARY 1, 1996.—Ordered to be printed

Mr. PRESSLER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—*This Act may be cited as the "Telecommunications Act of 1996".*

(b) **REFERENCES.**—*Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).*

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; references.

Sec. 2. Table of contents.

Sec. 3. Definitions.

nce audio quality and visual resolution
s "existing" spectrum as that spectrum
st purposes as of the date of enactment.

use amendment directs the Commission
licenses for advanced television services,
y for such licenses to incumbent broad-
ees and authorizes the Commission to
ld permit broadcasters to use such spec-
plementary services. Apart from the re-
this section leaves the final determina-
assigned to the broadcasters. This sec-
use of spectrum apart from the main
and supplementary" uses, provided the
ncy for such services is consistent with
designated by the Commission for the
sion services.

es the Commission to prescribe regula-
tion of any advanced television services,
levision (HDTV) services.

es the regulation of ancillary and sup-
quires that Commission regulations that
ces be applicable to the offering of anal-
person. This section, however, specifi-
carry" status on any of these ancillary

es the Commission to adopt any tech-
necessary to assure signal quality for
inter alia, that the Commission may re-
ements concerning minimum broadcast
sters for both NTSC and ATV services.
that if the Commission issues licenses
ices, it shall precondition such issuance
e or the other of the licenses be surren-
rsuant to its regulations. Subsection (c)
ense surrendered must be reassigned
g. This provision is designed to ensure
gahertz would be for temporary simul-
at, in due course, one of the licensed
Commission for assignment by competi-
also requires that the Commission must
the surrender of the license on public
ology through obtaining television re-
an ATV signal or on the potential loss
portion of the public.

the Commission to establish a fee pro-
supplementary services if subscription
ion fees apart from commercial adver-
ler to receive such services.

the Commission to conduct an evalua-
the date it issues its licenses for ad-

In subsection (f), the House adopts the Commission's definition of high definition television.

Conference agreement

The conference agreement adopts the House amendment with modifications. The conference agreement retains the requirement in the House amendment that the Commission condition the issuance of a new license on the return, after some period, of either the original broadcast license or the new license. However, the conference agreement leaves to the Commission the determination of when such licenses shall be returned and how to reallocate returned spectrum. With respect to paragraph (b)(3), the conferees do not intend this paragraph to confer must carry status on advanced television or other video services offered on designated frequencies. Under the 1992 Cable Act, that issue is to be the subject of a Commission proceeding under section 614(b)(4)(B) of the Communications Act. Further, the conference agreement also adopts the Senate language that the Act's public interest obligations extend to the new licenses and services. The conference agreement modifies the House amendment to provide that if the Commission decides to issue additional licenses for ATV services, it should limit the initial eligibility to broadcast licensees.

SECTION 202—BROADCAST OWNERSHIP

Senate bill

Section 207(b) of the Senate bill requires the Commission to change its rules regarding the amount of national audience a single broadcast licensee may reach. The current cap is 25% of the nation's television households. The Senate bill raises that to 35%. Section 207 directs the Commission to eliminate its rules regarding the number of radio stations one entity may own, either nationally or within a particular market. The Commission may refuse a transfer of a radio license if it would result in an undue concentration of control or would thereby harm competition. Section 207(b)(3) grandfathers existing television local marketing agreements (LMAs). Section 207(b)(4) eliminates the cable-broadcast crossownership ban in section 613(a) of the Communications Act, and the Commission is also required to review its ownership rules biennially, as part of its overall regulatory review required by new section 259 of the Communications Act. This provision is effective upon enactment.

House amendment

Section 302 of the House amendment adds a new section 337 to the Communications Act addressing broadcast ownership. Section 337, subject to specified restrictions and consistent with the cross-ownership restrictions of section 613(a) of the Communications Act, prohibits the Commission from prescribing or enforcing any regulation which prohibits or limits, on a national or local basis, a licensee from holding any form of ownership or other interest in two or more broadcast stations or in a broadcast station and any other medium of mass communication. This section also prohibits the Commission from prescribing or enforcing any regulation

which prohibits a person or entity from owning, operating, or controlling two or more networks of broadcast stations or from owning, operating, or controlling a network of broadcast stations and any other medium of mass communications. Section 337(b)(1) eliminates the limits placed on television audience nationwide and place limits on ownership of television stations by a single entity if the national audience reach exceeds 35 percent for the year following enactment of this section. This section directs the Commission to conduct a study of the operation of these national ownership limitations and to submit a report to Congress on the development of competition in the television marketplace and the need, if any, to amend these limitations.

Section 337(b)(2) sets forth the circumstances under which one entity may own or operate two television stations in a local market. Subparagraph (B) creates a presumption in favor of UHF/UHF and UHF/VHF combinations. Subparagraph (C) clarifies that the Commission may also permit VHF/VHF combinations where it determines that doing so will not harm competition and diversity.

Section 337(c) permits the Commission, under certain circumstances, to consider concentrations of local media interests in proceeding to grant, renew or authorize the assignment of station licenses. In proceeding to grant, renew, or authorize the assignment of a station license under this title, the Commission may deny an application if the Commission determines that the combination of such station and more than one other non-broadcast media in the communication would result in an undue concentration of voices in the respective local market. The Commission may deny grant applications that would result in two or fewer persons or entities controlling all the media of mass communications in the market. There is no requirement that any existing interests be divested, but the Commission may condition the grant of an application to acquire additional media interests.

Section 337(d) clarifies that any Commission rule prescribed prior to the date of enactment of this legislation that is inconsistent with the requirements of this section is repealed on the date of enactment. Nothing in subsection (d) is to be construed to prohibit the Commission or renewal of any television local marketing agreement on the date of enactment.

Conference Agreement

Section 202(a) of the conference agreement directs the Commission to modify its multiple ownership rules to eliminate its limitations on the number of radio stations which may be owned or controlled nationally. New subsection (b) directs the Commission to further modify its rules with respect to the number of radio stations which may own, operate or control in a local market. Subsection (c) provides an exception to the local market limits, where the acquisition or interest in a radio station will result in an increase in the number of radio stations.

Section 202(c)(1) directs the Commission to modify its multiple ownership rules to eliminate the number of television stations which may be owned or controlled nationally and to increase the national audience reach limitation for television stations to 35 percent. Subsection (c)(2) directs the Commission to conduct a rule-

making proceeding to determine whether ownership of more than one television station may be retained, modified or eliminated. It is that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations in certain circumstances.

Section 202(d) directs the Commission to review its policy with respect to its one to a market rule for the top fifty markets. The Commission has crossownerships of radio and television stations in the market, but has implemented a waiver policy in certain circumstances for public interest benefits of such crossownership. Those interested are not threatened by adopting subsection (d), intend to extend the one to a market rule to the top fifty markets. Also, in the Commission's review its television ownership rules generally, considering whether generally to allow such crossownership, including combinations of a television station and a radio station in the same service. The Commission's future implementation of its one to a market waiver policy, as well as any changes to its pending review, will take into account the need for diversity in today's radio market and the rationale for subsection (d).

Subsection (e) directs the Commission to amend CFR 73.658(g) to permit a television station or entity that maintains two or more stations or dual or multiple networks are composed of four existing networks (ABC, CBS, NBC, and PBS) and four existing networks and one of the (WBTN, UPN). The conferees do not intend to apply if such networks are not operated in the same territory is no substantial overlap in the territory of the stations comprising each such networks.

Subsection (f) directs the Commission to permit crossownership interests between a television station and a cable system. If necessary, the Commission's rules to ensure carriage, channel position, and treatment of non-affiliated broadcast stations affiliated with a broadcast network.

Subsection (g) grandfathers LMAs enacted under this legislation and allows them to be consistent with the Commission's rules. The contributions of television LMAs and this legislation does not deprive the public of the benefits of LMAs that were otherwise in compliance with the rules on the date of enactment.

Subsection (h) directs the Commission to review its rules adopted under section 202 and all of its rules. In its review, the Commission shall determine whether its ownership rules, including those adopted under this legislation are necessary in the public interest as determined. Based on its findings in such a review, the Commission may repeal or modify any regulation it determines to be necessary.

public interest. Apart from the biennial review required by subsection (h), the conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of the conferees that the Commission continue with these proceedings and conclude them in a timely manner.

Subsection (i) amends section 613(a) of the Communications Act by repealing the restriction on broadcast-cable crossownership. The conferees do not intend that this repeal of the statutory prohibition should prejudice the outcome of any review by the Commission of its rules. Subsection (i) also amends 613(a) by revising the cable-MMDS crossownership restriction so that it does not apply in any franchise area in which a cable operator faces effective competition.

SECTION 203—TERMS OF LICENSES

Senate bill

Section 207 of the Senate bill amends section 307(c) of the Communications Act to increase the term of license renewal for television licenses from five to ten years and for radio licenses from seven to ten years.

House amendment

Section 306 of the House amendment contains a similar provision but amends section 307(c) of the Communications Act to provide for a seven year license term for all broadcast licenses.

Conference agreement

The conference agreement adopts the House provisions but extends the license term for broadcast licensees to eight years for both television and radio.

SECTION 204—BROADCAST LICENSE RENEWAL PROCEDURES

Senate bill

Subsection (d) of section 207 amends the broadcast license renewal procedures. This subsection amends section 309 of the Communications Act by adding a new subsection (k) which gives the incumbent broadcaster the ability to apply for its license renewal without competing applications. A broadcaster would apply for its renewal and the Commission would grant such a renewal, if, during the preceding term of its license the station has served the public interest, convenience, and necessity, has not made any serious violations of the Communications Act or of the Commission's rules, and has not, through other violations, shown a pattern of abuse.

The Commission may not consider whether the granting of a license to a person other than the renewal applicant might serve the public interest, convenience, and necessity prior to its decision to approve or deny the renewal application. Under this section, the Commission has discretion to consider what is a serious violation of the Communications Act. If a licensee does not meet those criteria, the Commission may either deny the renewal, or impose conditions on the renewal. Once the Commission, after conducting a hearing on the record, denies an application for renewal, it is then

able to accept applications for a construction of facilities of the former licensee.

Subparagraph (4) would require bro a summary of comments regarding viole newal application.

House amendment

Section 305 of the House amendmen 309 of the Communications Act by add mandating a change in the manner in v newal applications are processed. Subse mission consideration of the renewal ap broadcast licensee without the contemp competing applications. Under this sul would grant a renewal application if it f ing its term, had served the public inte cessity; there had been no serious violat Communications Act or Commission rule other violations of the Communications which, taken together, indicate a patter sion finds that the licensee has failed to it could deny the renewal application c proval, including renewal for a lesser te renewal application could the Commission peting applications for the license.

Conference agreement

The conference agreement adopts t modifications to include the Senate prov applicant to attach to its application a garding violent programming. The conf effective date for this section at May 1, 1

SECTION 205—DIRECT BROADCAST

Senate bill

Section 312(a) of the Senate bill ame Communications Act to extend the curre signal piracy to direct-broadcast services.

Section 312(b) amends section 303 o to clarify that the Commission has excl regulation of direct broadcast satellite (D

House amendment

The House has identical provisions i the House amendment.

Conference agreement

The conference agreement adopts th conforming change to the definition of "di